

## § 13.109

as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 501)

[53 FR 20619, June 6, 1988]

### **§ 13.109 Determination of value of estate; 38 U.S.C. 5503(b)(1)(A) and 38 U.S.C. 5505.**

Except as stated in paragraph (d) of this section, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Department of Veterans Affairs regional offices, hospitals, State institutions, hospitals or institutions of any nature whatsoever, as well as other property, both personal and real (which is capable of being liquidated), and interest therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(a) The value of such property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at a forced sale after payment of all costs incident to liquidation.

(b) U.S. savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(c) Bonds and stocks, the current price listed on recognized stock exchange or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(d) The following will not be included as assets:

(1) Adjusted service certificate.

(2) Insurance policy having cash surrender or loan value.

(3) Dividend credits on National Service Life Insurance and United States Government Life Insurance policies.

(4) Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

(5)(i) *For purposes of determinations under 38 U.S.C. 5503(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may

## 38 CFR Ch. I (7-1-97 Edition)

be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. 5505.* The value of the veteran's home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this chapter.

(Authority: 38 U.S.C. 5505)

NOTE: Cash in the estate will be considered, notwithstanding it was derived from any of the above excluded items.

[40 FR 54250, Nov. 21, 1975, as amended at 53 FR 20619, June 6, 1988; 56 FR 65853, Dec. 19, 1991]

### **§ 13.110 Escheat; post fund.**

(a) *Escheat; 38 U.S.C. 5502(e).* Upon death of a beneficiary for whom payment of Department of Veterans Affairs benefits was made to a court-appointed fiduciary, legal custodian, custodian-in-fact, or by institutional award, the fiduciary (or the deceased beneficiary's personal representative) shall, upon request, account for and return to the Department of Veterans Affairs any remaining assets derived from Department of Veterans Affairs benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.

(b) *General Post Fund; 38 U.S.C. 5220(a).* Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Department of Veterans Affairs, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran's domicile, the veteran's fiduciary, if any, or the veteran's personal representative shall account for and turn over to the Department of Veterans Affairs all personal property, including money and chooses in action owned by the veteran at the time of his

or her death. (See also §14.514(c) of this chapter.)

(c) *Refusal of fiduciary or personal representative to cooperate.* If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Services Officer will submit a complete report to the Regional Counsel.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54250, Nov. 21, 1975]

### §13.111 Claims of creditors.

Under 38 U.S.C. 5301(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If the fiduciary does not do so, the Veterans Services Officer should refer the matter to the Regional Counsel for appropriate action.

[40 FR 54251, Nov. 21, 1975]

## PART 14—LEGAL SERVICES, GENERAL COUNSEL

Sec.

- 14.500 Functions and responsibilities of General Counsel.
- 14.501 Functions and responsibilities of Regional Counsels.
- 14.502 Requests for legal opinions from Central Office.
- 14.503 Requests for legal advice and assistance in other than domestic relations matters.
- 14.504 Domestic relations questions, authority and exceptions.
- 14.505 Submissions.
- 14.507 Opinions.

### LITIGATION (OTHER THAN UNDER THE FEDERAL TORT CLAIMS ACT); INDEMNIFICATION

- 14.514 Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees.
- 14.515 Suits involving loan guaranty matters.
- 14.516 Escheat and post fund cases.
- 14.517 Cases affecting the Department of Veterans Affairs generally.
- 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.

### PROSECUTION

- 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).
- 14.561 Administrative action prior to submission.
- 14.562 Collections or adjustments.
- 14.563 Crimes or offenses on Department of Veterans Affairs property.

### FEDERAL TORT CLAIMS

- 14.600 Federal Tort Claims Act.

### ADMINISTRATIVE CLAIMS

- 14.601 Investigation and development.
- 14.602 Requests for medical information.
- 14.603 Disposition of claims.
- 14.604 Filing a claim.

### LITIGATED CLAIMS

- 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

### ADMINISTRATIVE SETTLEMENT OF TORT CLAIMS ARISING IN FOREIGN COUNTRIES

- 14.615 General.
- 14.616 Form and place of filing claim.
- 14.617 Disposition of claims.

### CLAIMS FOR DAMAGE TO OR LOSS OF GOVERNMENT PROPERTY

- 14.618 Collection action.

### CLAIMS FOR COST OF MEDICAL CARE AND SERVICES

- 14.619 Collection action.

### REPRESENTATION OF DEPARTMENT OF VETERANS AFFAIRS CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 5901-5905

- 14.626 Purpose.
- 14.627 Definitions.
- 14.628 Recognition of organizations.
- 14.629 Requirements for accreditation of representatives, agents, and attorneys.
- 14.630 Authorization for a particular claim.
- 14.631 Powers of attorney.
- 14.632 Letters of accreditation.
- 14.633 Termination of accreditation of agents, attorneys, and representatives.
- 14.634 Banks or trust companies acting as guardians.
- 14.635 Office space and facilities.